

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JASON P. STEWART, et al.,

Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF
EDUCATION, et al.,

Defendants.

CASE NO. 07CV0971-MMA (WVG)

**ORDER SPREADING MANDATE OF
UNITED STATES COURT OF
APPEALS FOR THE NINTH
CIRCUIT;**

**VACATING APPEAL MANDATE
HEARING;**

**GRANTING DEFENDANTS POWAY
UNIFIED SCHOOL DISTRICT, et al.'s
REQUEST TO WAIVE FURTHER
PROCEEDINGS RE: VEXATIOUS
LITIGANT DETERMINATION**

APPEAL MANDATE

On September 20, 2012, the United States Court of Appeals for the Ninth Circuit entered judgment in this case, affirming this Court's February 8, 2010 Judgment dismissing Plaintiffs' claims under 42 U.S.C. § 1983, the Individuals with Disabilities Education Act ("IDEA"), the Americans with Disabilities Act ("ADA"), and § 504 of the Rehabilitation Act; vacating the Court's February 8, 2010 Order declaring Plaintiff Lindsey Stewart a vexatious litigant and imposing a pre-filing injunction; and remanding the action to this Court for further consideration of its pre-filing determination. The circuit court's judgment took effect October 15, 2012, and

1 constitutes the formal mandate issued pursuant to Rule 41(a) of the Federal Rules of Appellate
 2 Procedure. The mandate is spread, and this Court once again has jurisdiction over this action.
 3 Accordingly, the Court **VACATES** the Appeal Mandate hearing previously scheduled for
 4 November 27, 2012.

5 **VEXATIOUS LITIGANT MOTION**

6 On June 4, 2009, Defendants Poway Unified School District, et al. filed a Motion for an
 7 Order Requiring Plaintiffs to Furnish Security Pursuant to California Civil Procedure Section 391,
 8 *et seq.*, arguing that Plaintiff Lindsey Stewart qualifies as a vexatious litigant. *See* Civil Case No.
 9 08cv2254-MMA, Doc. No. 24. In its February 8, 2010 Order, the Court granted Defendants'
 10 motion and issued a pre-filing injunction against Ms. Stewart. *See* Doc. No. 189. As noted above,
 11 the circuit court vacated that portion of the Court's February 8, 2010 Order granting the motion
 12 and issuing the injunction, and remanded the matter for further consideration upon the basis of a
 13 more fully developed record.

14 On November 13, 2012, Defendants Poway Unified School District, et al. filed a Notice of
 15 Intent to Dismiss Vexatious Litigant Claim. *See* Doc. No. 207. Defendants now request "to waive
 16 any further follow-up proceedings on the pre-filing determination of a vexatious litigant
 17 designation against Lindsey Stewart." *Id.* As such, the Court shall consider Defendants' motion
 18 withdrawn.

19 **CONCLUSION**

20 It is well-settled that "a mandate is controlling as to matters within its compass." *Sprague*
v. Ticonic Nat'l Bank, 307 U.S. 161, 168 (1939). The rule of mandate prohibits a lower court,
 21 upon receiving the mandate of a higher court, from "vary[ing] it or examin[ing] it for any other
 22 purpose than execution." However, "the lower court may consider and decide any matters left
 23 open by the mandate of the court." *United States v. Cote*, 51 F.3d 178, 181-82 (9th Cir. 1995)
 24 (alterations and quotation marks omitted), quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247,
 25 255-56 (1895). The vexatious litigant issue presented in Defendant's June 4, 2009 motion was the
 26 only issue remaining open for reconsideration by this Court on remand. Hence, there are no
 27 further matters within the purview of this Court to determine.
 28

1 The circuit court has affirmed this Court's February 8, 2010 Judgment dismissing
2 Plaintiffs' claims. *See* Doc. No. 190. The Judgment remains in full force and effect and this case
3 remains closed.

4 **IT IS SO ORDERED.**

5 DATED: November 15, 2012

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7 Hon. Michael M. Anello
United States District Judge

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